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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

PETER J DEAN, an individual

Case No.:

Plaintiff,

vs.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation and administrative division of the State of California, RACHEL GARDUNIO, in her official capacity as the Appointing Officer of Hetch Hetchy Water and Power, and DOES 1 to 50,

COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 Plaintiff PETER JOSEPH DEAN sues Defendants, CITY AND COUNTY OF SAN
2 FRANCISCO (“City”), a municipal corporation and administrative division of the State of
3 California and RACHEL GARDUNIO, in her official capacity as the Appointing Officer of
4 Hetch Hetchy Water and Power, and Does 1 through 50, inclusive, and alleges as follows:

5 **PARTIES AND JURISDICTION**

6 1. Plaintiff, Peter J Dean is an adult person and at all times herein an employee of
7 Defendants working in the State of California, County of Tuolumne.

8 2. This action is filed in this court because the wrongful conduct complained of
9 herein occurred within the County of Tuolumne, State of California.

10 3. At all times material to this complaint, Defendant City and County of San
11 Francisco (hereinafter sometimes referred to as “City”) was an incorporated City of the State of
12 California and public employer operating as the City and County of San Francisco, County of
13 San Francisco, California, and doing business as Hetch Hetchy Water and Power in Tuolumne
14 County, subject to suit under Title VII of the Civil Rights Act of 1964 and the California Fair
15 Employment and Housing Act, Government Code § 12940 et seq. (FEHA).

16 4. At all relevant times, Rachel Gardunio, was the City and County of San
17 Francisco, Hetch Hetchy Water and Power Division, Appointment Officer and an employee of
18 Defendant City and County of San Francisco. Rachel Gardunio is being sued in her official
19 capacity.

20 5. Defendant City and County of San Francisco, Hetch Hetchy Water and Power
21 Division, is a public entity that was the employer of Plaintiff Peter J. Dean at relevant times
22 herein.

23 6. The true names and capacities, whether individual, corporate, associate, or
24 otherwise, of DOES 1 – 50, inclusive, are unknown to Plaintiff at this time, who therefore sues
25 said Defendants by such fictitious names. Plaintiff are informed and believe and thereon allege
26 that each of the fictitiously named Defendants is in some way responsible for, or participated in,
27 or contributed to, the matters and things complained of herein, and is legally responsible in some
28

1 manner. Plaintiff will seek leave to amend this Complaint when the true names, capacities, and
2 responsibilities have been ascertained.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 7. On June 23, 2021, the City issued a “COVID-19 Vaccination Policy” requiring
5 that all employees be vaccinated against SARS-CoV-2, (the virus that Defendants claim causes
6 COVID-19 (“COVID”)), when the U.S. Food and Drug Administration (“FDA”) approves any
7 COVID-19 Vaccine.

8 8. At all times relevant to City's June 23, 2021 “COVID-19 Vaccination Policy” and
9 subsequent revisions, Plaintiff has been a follower of the teaching of the Congregation of
10 Universal Wisdom. Plaintiff's sincerley held religious beliefs prohibit him from being injected
11 with any of the COVID-19 Vaccination Drugs.

12 9. Plaintiff has telecommuted full time for Defendants since approximately March
13 of the year 2020. Plaintiff's job duties do not require Plaintiff to be within close proximity to
14 other workers or the public. Plaintiff routinely performed testing such as temperature
15 monitoring and was willing to continue testing to demonstrate Plaintiff's fitness for duty.

16 10. Defendants contend the FDA Approved a COVID-19 Vaccine on August 23,
17 2021.

18 11. On August 26, 2021, Plaintiff notified Defendants of his religious prohibition to
19 being injected with the COVID-19 Vaccine by filing the form “Employee Request for Religious
20 Accommodation (COVID-19 Vaccination Exemption)”. Plaintiff included certification from his
21 congregation, religious texts, and declarations demonstrating his religious beliefs.

22 12. On September 21, 2021, the Defendants sent Plaintiff four written questions: “1.
23 Have you taken vaccines for any of the following diseases: rubella (measles), varicella
24 (chickenpox), or hepatitis A? 2. If applicable, have you authorized your children to receive
25 vaccines for rubella (measles), varicella (chickenpox), or hepatitis A? 3. If your answer to
26 question #1 and/or #2 is “yes” why is your position with respect to COVID-19 vaccine different
27 than for these other vaccines, all of which are also grown in cell lines derived from fetuses? 4.
28

1 Many common medications were also developed using the same type of technology used in the
2 development of COVID-19 vaccines, including Tylenol, Pepto Bismol, aspirin, Tums, Lipitor,
3 Senokot, Motrin, ibuprofen, Maalox, Ex-Lax, Benadryl, Sudafed, ablutrol, Preparation H,
4 Claratin, Zoloft, Prilosec OTC, and azithromycin. Do your beliefs prohibit you from taking and
5 will you in the future abstain from taking these and other similar medications? If not, what tenet
6 or belief prohibits the use of the COVID-19 vaccine, but permits the use of these other
7 medications?"

8 13. On September 22, 2021, Plaintiff submitted responses to all four written questions
9 sent by the City on September 21, 2021. Defendants made no further requests for information or
10 clarification of Plaintiff's religious beliefs.

11 14. On October 12, 2021, Defendants sent Plaintiff the form "DETERMINATION
12 ON COVID-19 VACCINATION EXEMPTION REQUEST" the form stated Defendants
13 "DENIED SINCERELY HELD RELIGIOUS BELIEF" stating the reason as "Documentation
14 Insufficient to Show a Conflict Between Vaccination Requirement and Sincerely Held Religious
15 Belief, Practice or Observance" the form stated the determination date was August 26, 2021.

16 15. On November 8, 2021, Defendants mailed to Plaintiff a letter titled "Notice of
17 Proposed Disciplinary Action and Employee Conferences/Skelly Meeting (Skelly Notice) and
18 Placement on Paid Administrative Leave". The letter stated Defendants intended to terminate
19 Plaintiff's employment based upon violation of the COVID-19 Vaccination Policy and in the
20 interim was removing Plaintiff from the workplace by placing Plaintiff on administrative leave.

21 16. On November 14, 2021, Plaintiff submitted an Intake Form with the California
22 Department of Fair Employment and Housing complaining of past and continuing discrimination
23 and other employment violation by Defendants against Plaintiff. The Intake Form was filed
24 concurrently with the U.S. Equal Employment Opportunity Commission (hereafter, "U.S.
25 EEOC").

26 17. On November 19, 2021, Plaintiff responded in writing to Defendants' November
27 8, 2021 letter titled "Notice of Proposed Disciplinary Action and Employee Conferences/Skelly
28 Meeting (Skelly Notice) and Placement on Paid Administrative Leave", objecting to Defendants

1 proposed actions and detailing the unlawfulness of Defendants' proposed actions including
2 discrimination, Defendants' failure to provide feedback or guidance regarding information
3 required for a religious exemption/accommodation, and violations of public policy.

4 18. On December 6, 2021, Defendants sent Plaintiff a letter stating Plaintiff was
5 terminated from employment effective December 7, 2021. The dismissal letter contained a
6 finding that, "Peter Dean's failure to comply with the vaccination requirement endangers the
7 health and safety of the City's workforce and the public we serve.".

8 19. On January 6, 2022, Defendants sent Plaintiff notice that his employment was
9 reinstated effective December 7, 2021, Defendants placed Plaintiff on unpaid leave effective
10 December 29, 2021, and provided notice of Defendants' intent to reclassify defendant as
11 "released from employment" on April 1, 2022 unless plaintiff became "fully vaccinated (as
12 defined by the City's current Vaccination Policy)".

13 20. Plaintiff is informed and believes and hereafter alleges that Defendants trained
14 Defendants' employees to search COVID-19 Vaccination Policy Exemption Requests for defined
15 characteristics such as opposition to fetal cell based drugs which would then subject the
16 employee's Exemption Request to a disparate sham process designed to result in no approvals.
17 Further, that Defendants did not approve any COVID-19 Vaccination Policy Exemption
18 Requests that included objections to fetal cells even if the Exemption Request contained
19 information that would otherwise qualify for acknowledgement of qualifying religious beliefs to
20 the COVID-19 Vaccination Policy under Defendants' standard.

21 21. Plaintiff is informed and believes and hereafter alleges that Defendants' only form
22 of accomodation was an offer of 60 days of unpaid leave for the employee to find there own job
23 somewhere else in the City; a fool's errand given the Defendants impossible criteria of finding a
24 position with the ability to perform every potential duty with no potential for human contact at
25 anytime; no employee received permanent accommodation.

26 22. On March 23, 2022, and within on year of the date of discrimination committed
27 by Defendants, Plaintiff signed a charge of discrimination with the California Department of
28 Faith Employment and Housing (now renamed to Caifornia Civil Rights Department)

concurrently acting with the U.S. EEOC.

23. On March 14, 2023, the California Civil Rights Department issued to Plaintiff a notice of right to sue. A copy of this notice of right to sue is appended hereto, marked "Exhibit 1", and is incorporated by this reference as though fully set forth.

24. On March 22, 2023, the U.S. EEOC issued to Plaintiff a notice of right to sue. A copy of this notice of right to sue is appended hereto, marked "Exhibit 2", and is incorporated by reference as though fully set forth.

25. Plaintiff has exhausted all of his administrative remedies.

FIRST CAUSE OF ACTION

TITLE VII – RELIGIOUS DISCRIMINATION –

FAILURE TO ACCOMMODATE

(42 U.S.C. § 2000e-2(a)(1))

(AGAINST ALL DEFENDANTS)

26. As a first, separate and distinct cause of action, Plaintiff complains against Defendants and Does 1 through 50, and each of them, and incorporates by reference the foregoing paragraphs of this complaint, as if fully set forth herein.

27. At all times mentioned in this compliant, Title VII was in full force and effect and was binding on Defendants. This section provides, in relevant part, that:

28. Title VII prohibits an employer from discriminating against an employee “because of such individual's ... religion.” 42 U.S.C. § 2000e-2(a)(1). This “includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business.” *Id.* § 2000e(j).

29. In other words, it is “unlawful for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees.” *Opuku-Boateng v. State of Cal.*, 95 F.3d 1461, 1467 (9th Cir. 1996) (quoting *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977)).

1 30. To establish a *prima facie* case for failure to accommodate a Plaintiff must
2 present evidence that: (1) the employee has a bona fide religious belief that conflicts with an
3 employment requirement; (2) they informed the employer of this belief; and (3) they were
4 disciplined for failure to comply with the conflicting employment requirement. *Heller v. EBB*
5 *Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993).

6 31. Once the plaintiff has made out a *prima facie* case for discrimination, the burden
7 then shifts to the employer to show that it could not reasonably accommodate the plaintiff's
8 religious beliefs without undue hardship. *TWA v. Hardison*, 432 U.S. 63, 84 (1977). Not only
9 does the burden of *proving* an undue hardship fall on defendants here, "at a minimum, the
10 employer was required to negotiate with the employee in an effort reasonably to accommodate
11 the employee's religious beliefs." *EEOC v. Hacienda Hotel*, 881 F.2d 1504, 1513 (9th Cir. 1989),
12 overruled on other grounds by *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

13 32. On August 26, 2021, Plaintiff clearly established a "bona fide religious belief"
14 and its conflict with the COVID-19 Vaccination Policy by notifying Defendants and providing
15 supporting documentation that his religious beliefs conflicted with Defendants' COVID-19
16 Vaccination Policy job requirement of injecting any of the COVID-19 Vaccination drugs.

17 33. Defendants provided no reasonable accommodation options for Plaintiff, not did
18 it engage in the interactive process to attempt to find a workable accommodation that would not
19 pose an undue hardship to Defendants. The failure to engage in meaningful interactive process
20 signals an employer's violation of its duty to accommodate because the employer is attempting to
21 remain purposefully ignorant of potential reasonable accommodations.

22 34. To establish the defense of "undue hardship" defendants must demonstrate that
23 any of the aforesaid accommodations would "bear more than a de minimis cost" on defendants.
24 *Hardison*, 432 U.S. at 84.

25 35. But as an initial matter, any supposed "undue hardship" must be "*on the conduct*
26 *of the employer's business.*" *EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 615 (9th
27 Cir. 1988) (citing 42 U.S.C. § 2000e(j)). As Defendants had operated without vaccinated
28 employees for more than a year and a half throughout the pandemic, having unvaccinated

employees on the job cannot be said to be an “undue hardship on the conduct of the employer’s business.” *Townley*, 859 F.2d at 615. The employer’s business had proceeded through other avenues (such as masking and testing) and compulsory vaccination-while desired by the City- thus cannot override religious exemptions.

5 36. Plaintiff is informed and believes and herein alleges that Defendants have at times
6 accommodated other employees, and that other cities, counties, municipalities, hospitals, and
7 businesses have accommodated their employees cost free utilizing testing, masking or other
8 accommodations. Reasonable (and safe) accommodations were available and known.
9 Defendants just chose to ignore them.

10 37. As a direct and proximate result of Defendants' discriminatory actions against
11 Plaintiff, as alleged herein, Plaintiff has suffered harm in the form of special damages, including
12 but not limited to, back pay, front pay, pre-judgment and post-judgment interest, and
13 compensatory damages and other affirmative relief necessary to eradicate the effects of
14 Defendants' unlawful employment practices.

15 38. Plaintiff is also entitled to reasonable attorneys' fees and costs pursuant to law.

16 39. Plaintiff further seeks a declaration that Defendants have discriminated against
17 Plaintiff and has violated Plaintiff's legal rights by failing to provide a reasonable
18 accommodation of his religious beliefs.

19 40. As a direct and proximate cause of Defendants' willful, knowing, and intentional
20 discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain
21 substantial losses as alleged herein including economic loses from lost past and future wages and
22 lost employment benefits, all to his damage in a sum according to proof.

23 41. Plaintiff has incurred and continues to incur legal expenses, costs and attorney
24 fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays
25 leave of court to amend this complaint when the amounts are more fully known.

26 42. WHEREFORE, plaintiff requests relief as set forth below in the Prayer for Relief.

SECOND CAUSE OF ACTION

1 **RELIGIOUS DISCRIMINATION – DISPARATE TREATMENT**

2 **(42 U.S.C. § 2000e-2(a)(1))**

3 **(Against All Defendants)**

4 43. As a second, separate and distinct cause of action, Plaintiff complains against
5 Defendants and Does 1 through 50, and each of them, and incorporates by reference the
6 foregoing paragraphs of this complaint, as if fully set forth herein.

7 44. Title VII makes it “an unlawful employment practice for an employer to
8 discriminate against any individual with respect to h[er] compensation, terms, conditions, or
9 privileges of employment, because of such individual's race, color, religion, sex, or national
10 origin.” 42 U.S.C. § 2000e-(a)(1).

11 45. A *prima facie* case for disparate treatment based on religion requires four
12 elements: (1) membership in a protected class; (2) meeting the qualifications for the job in
13 question; (3) adverse employment action; and (4) different treatment than similarly situated
14 employees outside the protected class. *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th
15 Cir. 2004) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

16 46. A plaintiff asserting a *prima facie* case for disparate treatment can do so through
17 either direct or indirect evidence. *See Lyons v. England*, 307 F.3d 1092, 1113 (9th Cir. 2002).

18 47. By requesting religious accommodation from Defendants which included his
19 religious opposition to injection of medications related to fetal cells, Plaintiff established himself
20 as a member of a protected class.

21 48. Plaintiff's employee record demonstrates unquestionably that he was qualified for
22 the position. That is why, prior to the mandate, Plaintiff had no indication that his job was in
23 jeopardy.

24 49. Plaintiff suffered an adverse employment action when Defendants seeing
25 Plaintiff's request for exemption from the COVID-19 Vaccination Policy contained a religious
26 opposition to injection of drugs related to fetal cell tissue identified Plaintiff's request for further
27 scrutiny in a process designed to result in Plaintiff's religious beliefs to be determined invalid,
28 Plaintiff's beliefs would have been deemed valid by Defendants if the request did not contain the

1 opposition to injection of drugs related to fetal cells. After receiving Plaintiff's request for
2 exemption from the COVID-19 Vaccination Policy, Defendants sent Plaintiff four questions
3 each related to the use of fetal cells. Prior to denying Plaintiff's religious beliefs, Defendants
4 made no effort to clarify Plaintiff's religious opposition to injection with all vaccines as
5 described in the certification and religious texts submitted from Plaintiff's religious
6 congregation, the Congregation of Universal Wisdom, which included no specific reference to
7 fetal tissue. Plaintiff is informed and believes and herein alleges that Defendants
8 implementation of this sham process resulted in the termination of all employee's that reported to
9 Defendants that they opposed the COVID-19 Vaccination Policy application due to its
10 requirements to be injected with drugs related to fetal cells.

11 50. As a result of Plaintiff's request for exemption from the COVID-19 Vaccination
12 Policy containing opposition to injection of drugs related to fetal cells, Plaintiff suffered an
13 adverse employment action of having his religious beliefs denied by Defendants and no attempts
14 to make an accommodation (such as a 60 day opportunity to transfer to a different position), thus
15 the act was in essence termination of employment under the COVID-19 Vaccination Policy.
16 Plaintiff suffered further adverse employment action by being terminated, then reinstated and
17 placed on unpaid leave with an offer for reemployment if Plaintiff violated his religious belief,
18 then terminated again.

19 51. As a direct and proximate result of Defendants' disparate treatment against
20 Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth
21 below in the Prayer for Relief.

22 52. As a direct and proximate cause of Defendants' willful, knowing, and intentional
23 discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain
24 substantial losses as alleged herein including economic loses from lost past and future wages and
25 lost employment benefits, all to his damage in a sum according to proof.

26 53. Plaintiff has incurred and continues to incur legal expenses, costs and attorney
27 fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays
28 leave of court to amend this complaint when the amounts are more fully known.

54. WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

THIRD CAUSE OF ACTION

TITLE VII – RETALIATION FOR RELIGIOUS CLAIMS

(42 U.S.C. § 2000e-3(a))

(All Defendants)

55. As a third, separate and distinct cause of action, Plaintiff complains against Defendants and Does 1 through 50, and each of them, and incorporates by reference the foregoing paragraphs of this complaint, as if fully set forth herein.

56. Title VII makes it unlawful “an employer to discriminate against any of [its] employees . . . because [s]he has opposed any practice made unlawful by this subchapter.” 42 U.S.C. § 2000e-3(a).

57. A *prima facie* case for retaliation requires a showing that (1) the plaintiff engaged in activity protected by Title VII; (2) an adverse employment action was taken by the employer against the plaintiff; and (3) a causal link existed between the protected activity and the adverse action. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1064 (9th Cir. 2002).

58. Here, on August 26, 2021, Plaintiff engaged in protected activity under Title VII when Plaintiff reported that he opposed Defendants COVID-19 Vaccination Policy due to the COVID-19 Vaccination's Policy's requirement to be injected with drugs related to fetal cell tissue and asserted the COVID-19 Vaccination Policy should not be applicable to Plaintiff due to religious reasons.

59. Then because Plaintiff's August 26, 2021 opposition to the COVID-19 Vaccination Policy included an opposition to fetal cell related drugs, Defendants used Plaintiff's submission to identify Plaintiff for termination by wrongfully not considering Plaintiff's religious request sufficient thus preventing Plaintiff from being able to participate in an accommodation search. Plaintiff is informed and believes and herein alleges that Defendants implementation of this sham process resulted in the termination of all employee's that reported to Defendants that they opposed the COVID-19 Vaccination Policy application due to its

requirements to be injected with drugs related to fetal cells.

60. As a direct and proximate result of Defendants' retaliitory actions against Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth below in the Prayer for Relief.

61. As a direct and proximate cause of Defendant's willful, knowing, and intentional discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses as alleged herein including economic loses from lost past and future wages and lost employment benefits, all to his damage in a sum according to proof.

62. Plaintiff has incurred and continues to incur legal expenses, costs and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays leave of court to amend this complaint when the amounts are more fully known.

12 63. WHEREFORE, plaintiff requests relief as set forth below in the Prayer for Relief.

FOURTH CAUSE OF ACTION
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT RELIGIOUS
DISCRIMINATION – FAILURE TO ENGAGE IN INTERACTIVE PROCESS

19 64. As a fourth, separate and distinct cause of action, Plaintiff complains against
20 Defendants and Does 1 through 50, and each of them, and incorporates by reference the
21 foregoing paragraphs of this complaint, as if fully set forth herein.

22 65. As alleged in this Complaint, Defendants failed to engage in a good-faith
23 interactive process with Plaintiff. Here, Defendants implemented a policy requiring injection
24 with a COVID-19 Vaccination Drug, allowed application for an exemption to the policy,
25 responded to Plaintiff's application with four questions regarding use of drugs Defendants
26 asserted are derived from fetal cells, and denied Plaintiff's exemption request alleging not
27 enough information provided. Defendants' failure to make any attempt to notify Plaintiff of
28 additional information needed or how the application was otherwise deficient and provide an

opportunity for Plaintiff to supplement the application is indicative of no interactive process.

66. As a direct and proximate result of Defendants' failure to engage in an interactive process with Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth below in the Prayer for Relief.

67. As a direct and proximate cause of Defendant's willful, knowing, and intentional discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses as alleged herein including economic loses from lost past and future wages and lost employment benefits, all to his damage in a sum according to proof.

68. Plaintiff has incurred and continues to incur legal expenses, costs and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays leave of court to amend this complaint when the amounts are more fully known.

69. WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

FIFTH CAUSE OF ACTION
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
RELIGIOUS DISCRIMINATION – FAILURE TO ACCOMMODATE
(Cal. Gov. Code § 12940(l))

70. As a fifth, separate and distinct cause of action, Plaintiff complains against Defendants and Does 1 through 50, and each of them, and incorporates by reference the foregoing paragraphs of this complaint, as if fully set forth herein.

71. At all times relevant, Defendants was subject to Government Code § 12940 et seq. because it regularly employed five (5) or more persons. Defendants employed Plaintiff prior to termination of Plaintiff for his refusal to violate his religious beliefs.

72. Government Code § 12940(l) provides that it is unlawful to discriminate against a person based on religion and may not invoke the undue hardship defense, unless the employer demonstrates it has “explored any available reasonable alternative means of accommodating the religious belief but is unable to reasonably accommodate the religious belief without undue

1 hardship."

2 73. As elaborated above in detail, Plaintiff has sincerely held religious beliefs that
3 prevent him from receiving the COVID-19 Vaccines.

4 74. Plaintiff's sincerely held religious beliefs conflicted with a job requirement
5 enacted during the course his employment, specifically, Defendants' mandatory COVID-19
6 Vaccination Policy for all employees.

7 75. Plaintiff informed Defendants of his religious beliefs and of the conflict that these
8 beliefs created regarding the vaccination policy.

9 76. Defendants did not explore any available alternatives of accommodating Plaintiff,
10 such as continuing to work remotely, or regular testing, or utilizing Personal Protective
11 Equipment. Rather, Defendants did not propose any accommodation options to Plaintiff
12 although accommodation options were offered to other employees.

13 77. Plaintiff's inability to comply due to his religouis beliefs conflicting with the
14 COVID-19 Vaccination Policy was a substantial motivating reason for Defendants decision to
15 take adverse employment actions against Plaintiff. Adverse employment actions included
16 among other things described in this Complaint, subjecting Plaintiff to intrusive and illmotivated
17 questioning, subjecting Plaintiff to unequal safety restrictions, placing Plaintiff on unpaid leave,
18 and eventually terminating Plaintiff.

19 78. As a direct and proximate result of Defendants' failure to accommodate against
20 Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth
21 below in the Prayer for Relief.

22 79. As a direct and proximate cause of Defendants' willful, knowing, and intentional
23 discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain
24 substantial losses as alleged herein including economic loses from lost past and future wages and
25 lost employment benefits, all to his damage in a sum according to proof.

26 80. Plaintiff has incurred and continues to incur legal expenses, costs and attorney
27 fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays
28 leave of court to amend this complaint when the amounts are more fully known.

1 81. WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

2

3

SIXTH CAUSE OF ACTION

4

CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

5

RETALIATION FOR RELIGIOUS CLAIMS

6

(Cal. Gov. Code § 12940(h) et seq.)

7

(All Defendants)

8 82. As a sixth, separate and distinct cause of action, Plaintiff complains against
9 Defendants and Does 1 through 50, and each of them, and incorporates by reference the
10 foregoing paragraphs of this complaint, as if fully set forth herein.

11 83. At all times relevant, Defendants were subject to Government Code § 12940 et
12 seq. because it regularly employed five (5) or more persons. Defendants employed Plaintiff
13 prior to terminating Plaintiff for his refusal to violate his religious beliefs

14 84. California cases hold that in order to establish a Prima Facie case of retaliation
15 under the FEHA , a plaintiff must show (1) he or she engaged in a “protected activity”, (2) the
16 employer subject the employee to an adverse employment action, and (3) a causal link existed
17 between the protected activity and the employer's action. *See Yanowitz v. L'Oreal USA Inc.*,
18 (2005) 36 Cal.4th 1028, 1042.

19 85. The elements for Retaliation under the FEHA are similar as Retaliation under
20 Title VII. The acts of Defendants described in the Third Cause of Action for Retaliation for
21 Religious Claims under Title VII also set forth liability under California Government Code §
22 12940 for Retaliation for Religious Claims and are incorporated by reference herein.

23 86. As a direct and proximate result of Defendants' retaliatory actions against Plaintiff,
24 as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth below in
25 the Prayer for Relief.

26 87. As a direct and proximate cause of Defendants' willful, knowing, and intentional
27 retaliatory actions against Plaintiff, Plaintiff has sustained and continues to sustain substantial
28 losses as alleged herein including economic loses from lost past and future wages and lost

employment benefits, all to his damage in a sum according to proof.

88. Plaintiff has incurred and continues to incur legal expenses, costs and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays leave of court to amend this complaint when the amounts are more fully known.

89. WHEREFORE, plaintiff requests relief as set forth below in the Prayer for Relief.

SEVENTH CAUSE OF ACTION
AMERICANS WITH DISABILITIES ACT
DISCRIMINATION BASED ON PERCEIVED DISABILITY
(42 U.S.C. § 12201, et seq)

90. As a seventh, separate and distinct cause of action, Plaintiff complains against Defendants and Does 1 through 50, and each of them, and incorporates by reference the foregoing paragraphs of this complaint, as if fully set forth herein.

91. In protecting against disability discrimination, the ADA defines a disability to include “being regarded [by your employer] as having such an impairment.” 42 U.S.C. § 12102(1)(C). Going on, the statute explains that “[a]n individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an [adverse employment] action . . . because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” *Id.* § 12102(3)(A). The only exception is if the perceived disability is both “transitory and minor” - meaning it is expected to last less than six months. *Id.* § 12102(3)(B).

92. Plaintiff informed Defendants that he was unable to receive a COVID-19 vaccination and requested reasonable accommodations from the same.

93. Defendants regarded Plaintiff as disabled, perceiving him as though he was perpetually infected with COVID-19. This is clear from Defendants Notice of Dismissal dated December 6, 2021 which finds that Plaintiff, "Peter Dean's failure to comply with the vaccination requirement endangers the health and safety of the City's workforce and the public

we serve.”. This clearly indicates Defendants perceived Plaintiff as though he was perpetually infected with COVID-19 and the condition was perceived to last indefinitely.

94. Defendants did not prove that Plaintiff posed any increased risk of transmitting COVID-19 than his fellow employees.

95. Defendants nevertheless treated Plaintiff as though he was disabled (i.e., that he could not perform his job safely) simply because he had not received a COVID-19 vaccination.

96. Defendants thereby discriminated against Plaintiff because of an imagined disability that was neither transitory (because Defendants believed it was ongoing) nor minor (because Defendants believed it impacted safety constantly).

97. By limiting, segregating, and classifying employees in a manner that adversely affected their employment opportunities based on an imagined disability, Defendants engaged in disability-based discrimination in violation of the ADA, thereby harming Plaintiff.

98. As a direct and proximate result of Defendants' retaliitory actions against Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth below in the Prayer for Relief.

99. As a direct and proximate cause of Defendant's willful, knowing, and intentional discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses as alleged herein including economic loses from lost past and future wages and lost employment benefits, all to his damage in a sum according to proof.

100. Plaintiff has incurred and continues to incur legal expenses, costs and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays leave of court to amend this complaint when the amounts are more fully known.

101. WHEREFORE, plaintiff requests relief as set forth below in the Prayer for Relief.

EIGHTH CAUSE OF ACTION

CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

FAILURE TO ACCOMMODATE PERCEIVED DISABILITY

(Cal. Gov. Code § 12900 et seq.)

(All Defendants)

102. As an eighth, separate and distinct cause of action, Plaintiff complains against Defendants and Does 1 through 50, and each of them, and incorporates by reference the foregoing paragraphs of this complaint, as if fully set forth herein.

5 103. Pursuant to California Government Code § 12940(a), it is unlawful for any
6 employer to discriminate against an employee because of the employee's disability. Under
7 California Government Code § 12926(o), this anti-discrimination law covers discrimination
8 against any employee based perceived disability by the employer. Furthermore, pursuant to
9 California Government Code § 12926(n), the definition of "disability" under the American with
10 Disabilities Action of 1990 is adopted into California law to the extent that it provides broader
11 protection than California law.

12 104. In protecting against disability discrimination, the ADA defines a disability to
13 include “being regarded [by your employer] as having such an impairment.” 42 U.S.C. §
14 12102(1)(C). Going on, the statute explains that “[a]n individual meets the requirement of ‘being
15 regarded as having such an impairment’ if the individual establishes that he or she has been
16 subjected to an [adverse employment] action . . . because of an actual or perceived physical or
17 mental impairment whether or not the impairment limits or is perceived to limit a major life
18 activity.” *Id.* 12102 § (3)(A). The only exception is if the perceived disability is both
19 “transitory and minor” - meaning it is expected to last less than six months. *Id.* § 12102(3)(B).

105. Plaintiff informed Defendants that he was unable to receive a COVID-19
vaccination and requested reasonable accommodations from the same.

22 106. Defendants regarded Plaintiff as disabled, perceiving him as though he was
23 perpetually infected with COVID-19. This is clear from Defendants Notice of Dismissal dated
24 December 6, 2021 which finds that Plaintiff, “Peter Dean’s failure to comply with the
25 vaccination requirement endangers the health and safety of the City’s workforce and the public
26 we serve.”. This clearly indicates Defendants perceived Plaintiff as though he was perpetually
27 infected with COVID-19 and the condition was perceived to last indefinitely.

28 107. Defendants did not prove that Plaintiff posed any increased risk of transmitting

COVID-19 than his fellow employees.

108. Defendants nevertheless treated Plaintiff as though he was disabled (i.e., that he could not perform his job safely) simply because he had not received a COVID-19 vaccination.

109. Defendants thereby discriminated against Plaintiff because of an imagined disability that was neither transitory (because Defendants believed it was ongoing) nor minor (because Defendants believed it impacted safety constantly).

110. By limiting, segregating, and classifying employees in a manner that adversely affected their employment opportunities based on an imagined disability, Defendants engaged in disability-based discrimination in violation of the ADA, thereby harming Plaintiff.

111. As a direct and proximate result of Defendants' retaliatory actions against Plaintiff, as alleged herein, Plaintiff has suffered harm and is entitled to further relief as set forth below in the Prayer for Relief.

112. As a direct and proximate cause of Defendant's willful, knowing, and intentional discriminatory actions against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses as alleged herein including economic loses from lost past and future wages and lost employment benefits, all to his damage in a sum according to proof.

113. Plaintiff has incurred and continues to incur legal expenses, costs and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees, and prays leave of court to amend this complaint when the amounts are more fully known.

114. WHEREFORE, Plaintiff requests relief as set forth below in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in his favor and against the Defendant(s), as follows:

1. Declare that City's protocol for determining sincerity of faith in whole, or in part, on its face, and as applied, does not comport with the requirements of Title VII and/or the FEHA;

2. Declare that City's universal declaration that each and every unvaccinated-

1 religious-objector-employee poses a danger to the employee, co-worker, and others, and thus
2 accommodation poses an undue hardship on San Francisco, fails the reaonableness requirement
3 under Title VII and/or the FEHA;

4 3. Declare that City violated the ADA by treating Plaintiff as being perpetually
5 infected by a threatening virus, thus regarding him as disabled and discriminating against him
6 without justification;

7 4. Declare that City violated Title VII, the ADA, and California state law for its
8 failure to provide a reasonable accommodatoin for Plaintiff's clearly articulated regligious beliefs
9 when numerous no-cost options were available;

10 5. Declare that City violated Title VII, the ADA, and California law by failing to
11 engage in the interactive process in response to Plaintiff's request for accommodations to the
12 City's vaccine mandate and, instead, preemptively denied those requests based on pretextual
13 reasons;

14 6. Declare that City's disparate treatment of Plaintiff, in interrogating him seeking a
15 religious accommodation in a bad faith attempt to undermine his beliefs rather than determine
16 reasonable accommodation constitutes religious discrimination in violation of Title VII, and
17 California state law;

18 7. Declare that City violated Title VII, the ADA, and California state law by
19 retaliating against Plaintiff for engaging in protected activitivy through seeking religious
20 accommodations;

21 8. For a money judgment representing special damages including lost past and
22 future wages, lost past and future employment benefits including retirement benefits, costs of the
23 suit herein, all other sums of money, together with pre-judgment interest and post-judgment
24 interst on said amounts at the legal rate, and any other economic injury to plaintiff, according to
25 proof;

26 9. Restoration of employee benefits, including, but not limited to, medical benefits,
27 pensions, and insurance;

28 10. Restore vacation days, comp hours, and lost time hours;

1 11. For costs of suit herein;
2 12. For attorney fees under any applicable statutory or equitable basis;
3 13. For prejudgment interest under any applicable statutory basis, at the legal rate;
4 and
5 14. For any other relief that is just and proper.

6

7

8 **DEMAND FOR JURY TRIAL**

9

10 PLEASE TAKE NOTICE THAT Plaintiff Dean hereby demands trial by jury for the above
11 cause.

12

13 Dated: April 6, 2023

LAW OFFICES OF PETER J DEAN

14

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By:


PETER J DEAN
Attorney for Plaintiff
In Propria Persona

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EXHIBIT 1

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EXHIBIT 1



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

GOVERNOR

KEVIN KISH, DIRECTOR

March 14, 2023

Via Email: peterjd209@msn.com

Peter Dean
PO Box 1566
Oakdale, CA 95361

RE: Notice of Case Closure and Right to Sue

Case Number: 202111-15382715

Case Name: Dean / County and City of San Francisco-Hetch Hetchy Water and Power

EEOC Number: 37A-2022-00981

County of Violation: Tuolumne

Dear Peter Dean:

The Civil Rights Department (CRD) has closed your case for the following reason: **Agency Discretion.** The CRD makes no determination about whether further investigation would establish violations of the Fair Employment and Housing Act (FEHA) or other laws. This decision does not mean the alleged claims have no merit or that the respondent is in compliance with the law. No finding is made as to any other issues that might be construed as having been raised by this complaint.

This is your Right to Sue notice. As specified in Government Code section 12965, subdivision (b), you may file your own civil action asserting employment claims under the FEHA within one year of the date of this letter. If you want to file a civil action that includes other claims, you should consult an attorney about the applicable statutes of limitation.

Your complaint is **dual filed** with the United States Equal Employment Opportunity Commission (EEOC). You have a right to request EEOC to perform a substantial weight review of our findings. This request must be made within fifteen (15) days of your receipt of this notice. Pursuant to Government code section 12965, subdivision (d) (1), your right to sue may be tolled during the pendency of EEOC's review of your complaint. To secure this review, you must request it in writing to the State and Local Coordinator:

**EEOC Southern California
Roybal Federal Building
255 East Temple Street, 4th Floor
Los Angeles, California 90012
Karrie.Maeda@eeoc.gov**

You have the right to appeal the decision to close your case. This request must be made within ten (10) days of receiving this letter. Your appeal must include: 1) a summary as to why you disagree with the case closure; and/or 2) any new detailed information (e.g., documents, records, witness information) that supports your claim. If you appeal, the information you provide will be carefully considered. You may appeal this decision by:

- Email. Send your request to appeals@dfeh.ca.gov and make reference to the case #: 202111-15382715.
- Mail. Send your request to: CRD, Appeals Unit, 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758. Include a copy of this letter and make reference to the case #: 202111-15382715.
- Phone. Call us at 800-884-1684 (voice), 800-700-2320 (TTY), or by using California's Relay Service at 711.

Although the CRD has closed this case, the allegations and conduct at issue may be in violation of the law. You should consult an attorney as soon as possible regarding any other options and/or recourse you may have regarding the underlying acts or conduct.

Below are some resources to assist you in deciding whether to bring a civil action on your own behalf in court in the State of California under the provisions of the FEHA against the person, employer, labor organization or employment agency named in your complaint. To proceed in Superior Court, you should contact an attorney.

- The State Bar of California has a Lawyer Referral Services Program which can be accessed through its website at www.calbar.ca.gov under the "Public" link, or by calling 866-442-2529 (within California) or 415-538-2250 (outside California).
- Your local city or county may also have a lawyer referral or legal aid service.
- The Department of Consumer Affairs (DCA) has a publication titled "The Small Claims Court: A Guide to Its Practical Use" online at www.dca.ca.gov/publications/small_claims. You may also order a free copy by calling the DCA Publication Hotline at 866-320-8652, or by writing to them at: DCA, Office of Publications, Design and Editing, 1625 North Market Blvd., Suite N-112, Sacramento, CA 95834.

Sincerely,

Clara Hernandez

Clara Hernandez
FEH Consultant III (Specialist)
661-395-2973
clara.hernandez@dfeh.ca.gov

Cc: County and City of San Francisco-Hetch Hetchy Water and Power
Steven Tang, EEO Programs Manager
SFPUC Human Resources Services
Via Email: smtang@sfgov.org

EXHIBIT 2

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EXHIBIT 2



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Los Angeles District Office
255 East Temple St, 4th Floor
Los Angeles, CA 90012
(213) 785-3090
Website: www.eeoc.gov

DISMISSAL AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 03/22/2023

To: Peter Dean
PO Box 1566
Oakdale, CA 95361

On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR 1601.7(a))

Charge No: 37A-2022-00981

EEOC Representative and email: KARRIE MAEDA
State, Local & Tribal Program Manager
karrie.maeda@eeoc.gov

DISMISSAL OF CHARGE

The EEOC is closing this charge because you have already filed a lawsuit in a state court on this matter.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated your charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice**. Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

On behalf of the Commission,

Digitally Signed By: Christine Park-Gonzalez
03/22/2023

Christine Park-Gonzalez
District Director

Cc:

County and City of San Francisco-
Hetch Hetchy Water and Power
C/o: Steven Tang, Dena Narbaitz
525 Golden Gate Avenue, 3rd Floor
San Francisco, CA 91402

Please retain this notice for your records.